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ALEXANDRIA, VA 22313-1450
www.uspto.gov

MAIL

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Kavita Lepping
Venable
PO Box 34385
Washington D.C. 20043-9998

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Adamy et al.)
Application No. 09/485,445) DECISION ON PETITION TO
Attorney Docket No. 32221-153110 RK) WITHDRAW HOLDING OF
Filed: February 11, 2000) ABANDONMENT UNDER 37 CFR
For: CONTROL UNIT COMPRISING) §1.181
DYNAMIC FUZZY LOGIC CONTROL)
ELEMENTS, TEMPORALLY DISCRETE)

This is a decision on the petition filed July 2, 2004 requesting the Withdrawal of the Holding of Abandonment under 37 CFR §1.181. This application was held abandoned for failure to respond to the Notice of Allowance mailed December 2, 2002 (Paper No. 9). A Notice of Abandonment was mailed on June 9, 2004 (Paper No. 11). The Office wishes to apologize for the delay in responding to this petition.

In support of the petition, Ms. Lepping has submitted papers to support the statements involving the nonreceipt of the Notice of Allowance. These include the firm's docket report dated March 1-3, 2003; a copy of the firm's incoming mail log from the dates of December 2-13, 2002; and a statement from Ms. Carolyn Hopkins regarding the docketing procedures at Venable, LLP.

The proof necessary is set forth in MPEP §711.03(c). The showing required to establish nonreceipt of an Office action includes the following:

- 1) *a statement from the practitioner that the Office action was not received,*
- 2) *a statement from the practitioner that the file jacket and docket records were searched,*
- 3) *a copy of the docket record at the address of record, and*
- 4) *a reference to the docket record in the practitioner's statement.*

(Emphasis added.)

The petition fails to fully comply with the requirements set forth above. The evidence submitted fails because Ms. Lepping, while a registered practitioner, is not of record in this application and therefore is not the practitioner as intended under the guidelines. In addition, the practitioner's statement should clearly state the docket records and the file jacket were searched. The statement from Ms. Hopkins does not cure these problems because she is a Patent Coordinator, and not a practitioner. It is noted her statement presumes the issue fee due date was March 2, 2003, but the Notice of Allowance and Fee Due indicates the issue fee due date was March 3, 2003. As the evidence in Attachment 1 spans the period of March 1 to March 3, 2003, Ms.

Hopkins statement does not need to be amended. However, the practitioner should provide a clarifying statement as to why some of the sheets provided as Attachment 2 are handwritten and others are computer generated. As Ms. Hopkins' states the process involves a manual log-in, the computer generated pages in Attachment 2 suggests an error could have occurred between the hand recording of data and its later entry into a "Mail Log." The practitioner should clarify that procedure and check the firm's internal records, if appropriate. However, new evidence is not required other than the appropriate statements from the practitioner.

The evidence submitted to date has not overcome the presumption of receipt. The petition is **DISMISSED**.

Petitioners should clarify some of the statements made in the instant petition if a request on this matter is renewed. On page 2 in the "Statement of Facts," the following statements are made

On June 2, 2004, the undersigned received a phone call from the Examiner requesting approval for an *examiner's amendment*. The undersigned indicated that he was not aware the application was allowed because a Notice of Allowance was never received. *The undersigned further indicated that at this point, the application would be considered abandoned.* On June 10, 2004, the Notice of Abandonment dated June 9, 2004 was received. (Emphasis added)

The practitioner should review and clarify these statements for the record. As the application was abandoned by statute on March 3, 2003, it is unclear why a discussion might have been held in June 2004 for an examiner's amendment. In addition, if applicants are now petitioning to withdraw the holding of abandonment, why did the "undersigned" make a statement in June 2004 that the "application would be considered abandoned"? Did the practitioner intend for the application to be abandoned?

If the petitioners desire further review of this decision, petitioners should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Telephone inquiries should be directed to the undersigned at 571-272-3567.


Josie A. Ballato
Josie A. Ballato
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security